

Message Text

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ACTION L-03

INFO OCT-01 EUR-25 IO-14 ISO-00 AID-20 CIAE-00 COME-00

EB-11 FRB-02 INR-10 NSAE-00 RSC-01 TRSE-00 XMB-07

OPIC-12 SPC-03 CIEP-02 LAB-06 SIL-01 OMB-01 STR-08

FTC-01 PA-04 PRS-01 USIA-15 DRC-01 /149 W

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R 131605ZHMAR 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC 1048

INFO AMCONSUL BREMEN

AMCONSUL DUSSELDORF

AMCONSUL FRANKFURT

AMCONSUL HAMBURG

AMCONSUL MUNICH

AMCONSUL STUTTGART

USMISSION BERLIN

USMISSION GENEVA

USMISSION EC BRUSSELS

USMISSION NATO BRUSSELS

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY HELSINKI

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY OSLO

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY STOCKHOLM

AMEMBASSY VIENNA

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E.O. LL652: N/A

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TAGS: GW, ELAB

SUBJECT: MORE BACKGROUND ON PROPOSED CODETERMINATION
LAW

REF: BONN (A) 01320, (B) 03610

1. SUMMARY. REF B REPORTED FEARS OF AMERICAN CHAMBER OF COMMERCE IN GERMANY THAT THE PROPOSED LAW TO EXTEND PARITY CODETERMINATION FROM COAL AND STEEL INDUSTRIES TO ALL LARGE FIRMS WOULD IMPAIR THE EFFECTIVE MANAGEMENT OF AMERICAN FIRMS IN THE FRG AND MIGHT CONTRAVENE A 1954 MFN TREATY BETWEEN THE US AND THE FRG. THE FOLLOWING PROVIDES MORE BACKGROUND ON THE PROPOSED LAW. END SUMMARY.

2. THE PENDING LEGISLATION WHICH WOULD APPLY TO THE APPROXIMATELY 650 FIRMS WITH MORE THAN 2,000 EMPLOYEES REQUIRES EQUAL REPRESENTATION OF STOCKHOLDERS AND LABOR ON BOARDS OF SUPERVISORS. IT IS SOMEWHAT MORE FAVORABLE TO EMPLOYER INTERESTS THAN THE FORM OF CODETERMINATION PRACTICED IN THE COAL AND STEEL INDUSTRIES.

3. THE PROPOSED BILL IS A COMPLICATED COMPROMISE DESIGNED TO MEET THE CONCERNS OF THE DGB, SPD AND FDP. LARGE GERMAN CORPORATIONS ARE GOVERNED BY TWO BOARDS: THE BOARD OF SUPERVISORS (AUFSICHTSRATE) SETS GENERAL POLICY, AND THE BOARD OF MANAGEMENT (VORSTAND) IS RESPONSIBLE FOR THE OPERATION OF THE FIRM. UNDER THE PLAN APPROVED BY THE CABINET ON FEBRUARY 20, BOARDS OF SUPERVISORS WOULD CONSIST OF AN EQUAL NUMBER OF REPRESENTATIVES OF STOCKHOLDERS AND LABOR. TWO-THIRDS OF THE LABOR REPRESENTATIVES, ONE OF WHOM MUST BE A MANAGERIAL EMPLOYEE (LEITENDE ANGESTELLTE), WOULD BE CHOSEN FROM WITHIN THE PLANT. THE REMAINING THIRD WOULD BE UNION REPRESENTATIVES FROM OUTSIDE THE COMPANY, NOMINATED BY UNIONS REPRESENTING WORKERS IN THE COMPANY.

4. LABOR REPRESENTATIVES WOULD BE CHOSEN INDIRECTLY. THE THREE GROUPS WITHIN THE COMPANY, BLUE-COLLAR WORKERS (ARBEITER), SALARIED WORKERS (ANGESTELLTE), AND MANAGERIAL EMPLOYEES (LEITENDE ANGESTELLTE), WOULD NOMINATE LIMITED OFFICIAL USE

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AND ELECT ELECTORS (WAHLMAENNER). THE ELECTORAL BODY (WAHLMAENNERGEMEINSCHAFT) WOULD THEN ELECT LABOR REPRESENTATIVES TO THE BOARDS OF SUPERVISORS BY ABSOLUTE MAJORITY ON THE FIRST ROUND OR BY SIMPLE MAJORITY ON THE SECOND ROUND.

5. THE STOCKHOLDERS WOULD CHOOSE THEIR REPRESENTATIVES AT A GENERAL MEETING IN ACCORDANCE WITH GERMAN CORPORATE

TION LAW WHICH ALLOWS COMPANIES CONSIDERABLE FREEDOM IN ESTABLISHING THEIR OWN REGULATIONS.

6. THE BOARD OF SUPERVISORS WOULD ELECT A CHAIRMAN AND DEPUTY CHAIRMAN, ONE OF WHOM MUST BE A LABOR REPRESENTATIVE AND THE OTHER A REPRESENTATIVE OF THE STOCKHOLDERS. IF EITHER THE CHAIRMAN OR THE DEPUTY CHAIRMAN FAILED TO RECEIVE A TWO-THIRDS MAJORITY ON THE FIRST BALLOT, A SIMPLE MAJORITY ON THE SECOND BALLOT WOULD BE SUFFICIENT FOR ELECTION. IF ELECTED BY A SIMPLE MAJORITY THE CHAIRMANSHIP WOULD ROTATE BETWEEN THE LABOR REPRESENTATIVE AND THE STOCKHOLDER REPRESENTATIVE EVERY TWO YEARS. THE BOARD OF SUPERVISORS COULD GIVE THE CHAIRMAN THE POWER TO CAST DECIDING VOTES IN CASE OF A TIE. THE BOARD OF SUPERVISORS WOULD ALSO APPOINT THE MEMBERS OF THE BOARD OF MANAGEMENT (VORSTAND). IF A NOMINEE TO THE BOARD OF MANAGEMENT FAILED TO RECEIVE THE

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SUPPORT OF TWO-THIRDS OF THE MEMBERS OF THE BOARD OF SUPERVISORS, A COMPLICATED AND TIME CONSUMING CONCILIATION PROCEDURE WOULD BE FOLLOWED BY A SECOND VOTE IN WHICH A MAJORITY OF THE SUPERVISORS COULD APPOINT A MEMBER OF THE BOARD OF MANAGEMENT. IF THE SUPERVISORS FAIL TO REACH AGREEMENT ON THE SECOND BALLOT, THE STOCKHOLDERS WOULD CHOOSE THE MANAGER.

7. IT IS DIFFICULT TO PREDICT IF THE BUNDESTAG WILL PASS THE CODETERMINATION BILL IN ITS PRESENT FORM. THE PRESIDENT OF THE DGB HAS SAID THAT THE BILL IS UNACCEPTABLE, PRIMARILY BECAUSE IT REQUIRES THE INDEPENDENT REPRESENTATION OF MANAGERIAL EMPLOYEES ON THE BOARDS OF SUPERVISORS THEREBY MAKING IT POSSIBLE FOR THE MANAGERIAL EMPLOYEES TO VOTE WITH THE STOCKHOLDER REPRESENTATIVES AND BECAUSE THE CHAIRMAN OF THE BOARD OF SUPERVISORS AND THE STOCKHOLDERS ARE GIVEN TOO MUCH POWER. CERTAIN GROUPS WITHIN THE SPD ALSO OPPOSE THE BILL IN SUPPORT OF OBJECTIONS BY THE DGB.

8. THE STRONGEST OPPONENTS ARE THE LEADERS OF INDUSTRY, REPRESENTED BY THE CONFEDERATION OF GERMAN EMPLOYERS ASSOCIATIONS (BDA). BDA SPOKESMEN, LIKE THE AMERICAN CHAMBER OF COMMERCE, SAY THAT CODETERMINATION WOULD MAKE IT IMPOSSIBLE FOR MANAGERS TO MAKE THE QUICK DECISIONS REQUIRED IN A COMPETITIVE BUSINESS ENVIRONMENT. THEY ESPECIALLY OPPOSE THE PROVISION OF THE BILL WHICH REQUIRES THAT THE CHAIRMANSHIP OF THE BOARD OF SUPERVISORS

ROTATE BETWEEN LABOR AND MANAGEMENT IF THE CHAIRMAN FAILED TO RECEIVE THE SUPPORT OF TWO-THIRDS OF THE SUPERVISORS. THEY ALSO FEEL THAT NO QUALIFIED CANDIDATE FOR THE BOARD OF MANAGEMENT (VORSTAND) WOULD BE WILLING TO SUBMIT TO SUCH A LENGTHY ELECTION PROCESS.

9. THE GOVERNMENT DRAFTERS OF THE BILL FORESAW THE OBJECTIONS OF THE VARIOUS INTERESTED PARTIES BUT BELIEVE THE BILL WILL PASS WITHOUT SIGNIFICANT CHANGE. IF THE BUNDESTAG ACTS ON THE BILL QUICKLY, IT WILL PROBABLY PASS. BUT DEBATE MAY LAST SEVERAL MONTHS AND DURING THAT TIME POSITIONS MAY SHIFT AS THE INTERESTED LIMITED OFFICIAL USE

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PARTIES TRY TO HAVE THE BILL AMENDED TO SATISFY THEIR PARTICULAR INTERESTS.

10. EVEN IF THE BILL DOES NOT PASS IN ITS PRESENT FORM, IT IS NOT LIKELY THAT LARGE FIRMS, WHETHER GERMAN OR FOREIGN, WILL BE ABLE TO AVOID MITBESTIMMUNG VERY LONG IN LIGHT OF THE COMMITMENT OF ALL PARTIES TO THE PRINCIPLE "EQUAL RIGHTS AND EQUAL INFLUENCE" OF EMPLOYEES AND SHAREHOLDERS IN RUNNING LARGE COMPANIES.

11. THERE IS WIDE SUPPORT FOR MITBESTIMMUNG IN THE FRG AND THE CHAMBER WILL NOT LIKELY FIND MUCH SUPPORT FOR ITS POSITION OTHER THAN IN THE GERMAN EMPLOYERS ASSOCIATIONS. PARTICIPATION OF WORKERS IN CORPORATE MANAGEMENT HAS BEEN A PRIMARY GOAL OF THE GERMAN LABOR MOVEMENT FOR MANY YEARS, AND TODAY THE GENERAL PRINCIPLE OF CODETERMINATION IS ACCEPTED BY MOST GERMANS AND BY THE THREE MAJOR POLITICAL PARTIES. TO ITS ADVOCATES, MITBESTIMMUNG IS MORE THAN A SYSTEM FOR THE ADMINISTRATION OF INDUSTRY AND GRANTING EQUAL RIGHTS TO CAPITAL AND LABOR, IT IS A MEANS OF CHANGING SOCIETY AND AN ALTERNATIVE TO CAPITALISM AND SOCIALISM.

12. THE IMPLEMENTATION OF MITBESTIMMUNG IS A GRADUAL PROCESS WHICH BEGAN IN 1951 WHEN "PARITY" CODETERMINATION, THE MONTAN MODELL, WAS APPLIED IN THE COAL AND STEEL INDUSTRIES. THE INDUSTRIAL RELATIONS ACT (BETRIEBSVERFASSUNGSGESETZ) OF 1952 ALSO INCLUDED ELEMENTS OF CODETERMINATION. IT REQUIRED THAT ONE-THIRD OF THE MEMBERS OF THE BOARDS OF SUPERVISORS BE LABOR REPRESENTATIVES. IT ALSO AUTHORIZED THE ELECTION OF WORKS COUNCILS AND GRANTED THE WORKS COUNCILS THE RIGHT TO PARTICIPATE IN PERSONNEL ADMINISTRATION, BUSINESS POLICY AND WELFARE PROGRAMS. THE MOST RECENT EFFORT TO EXTEND CODETERMINATION TO ALL LARGE FIRMS IN THE FRG CULMINATED IN THE SPD/FDP COMPROMISE PROPOSAL WHICH IS NOW BEFORE THE BUN-

DESTAG. GERMAN LABOR LEADERS HOPE TO SEE CODETERMINATION
EXPANDED IN THE PUBLIC SERVICE IN THE FRG AND EVENTUALLY
EXTENDED TO ALL COUNTRIES IN THE EC. THEY BELIEVE THE
EXTENSION OF CODETERMINATION THROUGHOUT WESTERN EUROPE
WOULD FORCE THE MULTINATIONAL CORPORATIONS TO BECOME
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MORE RESPONSIVE TO THE NEEDS OF THE COUNTRIES IN WHICH
THEY ARE LOCATED.

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